

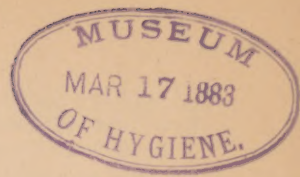
347

ARGUMENT
OF
FRANK W. JONES
BEFORE THE
COMMITTEE ON INVALID PENSIONS
OF THE HOUSE OF REPRESENTATIVES,

*In the Matter of the Petition for Relief of MARY
N. DE HAVEN, widow of EDWIN J. DE
HAVEN, late Lieutenant, United States Navy,
and Commander of the Grinnell Arctic Expe-
dition in search of Sir John Franklin,—*

Delivered May 10, 1878.

347



ARGUMENT.

Mr. Chairman, and Gentlemen of the Committee:

Lieutenant Edwin J. De Haven entered the naval service at twelve years of age in 1829,—took part in Wilkes' Antarctic Expedition from 1838 to 1842,—was midshipman on the "Peacock," which was lost in a storm, and was favorably noticed for gallantry and skill on that occasion,—was afterwards in the survey of the country in the neighborhood of the Columbia river,—during the Mexican war commanded the Flag Ship in the Gulf Squadron,—was second on the list for promotion according to ability and irrespective of rank, in a bill before Congress in 1852,—was called to command of the Grinnell Arctic Expedition in 1850, from which he returned in 1851, having reached a point further north than had been touched by any navigator up to that time,—was afterwards, in 1854-'56, in command of the "Arago," engaged in surveying the coast south of Florida, along the Gulf of Mexico and up the Rio Grande,—was retired in 1862, on account of loss of memory, which was attributed to results of his Arctic service, and died of disease of the lungs in 1865, having served over thirty-five years.

Shortly after his death, his widow applied for a pension, but in consequence of the illiberal construction of the pension laws at that time, her claim was not allowed.

Within the past few years Mrs. De Haven, understanding that the pension laws were being construed with a liberality more in consonance with their spirit, renewed her application at the Pension Office, also submitting additional testimony regarding her husband's death. This medical testimony, as the claim had then been filed in the Pension Office more than five years, was, according to the provisions of Section 4717, of the Revised Statutes, referred to the Surgeon-General of the Navy. His report thereupon, it is believed the Commissioner of Pensions is bound, by a proper construction of the statute, to accept as legally establishing the point of origin of death in line of duty. The Commissioner does not accept the report of the Surgeon-General as establishing this point.

It is asked, in the language of the bill for her relief: "That the opinion of the Surgeon General of the Navy, in the claim of Mary N. De Haven for pension, shall be accepted by the Commissioner of Pensions, as establishing the fact of the origin in line of duty of the death of Edwin J. De Haven, late Lieutenant United States Navy."

The opinion in full is as follows:

"NAVY DEPARTMENT,
BUREAU OF MEDICINE AND SURGERY,
Washington, D. C. April 13, 1877.

SIR: The papers in the case of the claim of Mary N. De Haven, widow of Lieut. Ed. J. De Haven, U. S. Navy, transmitted with your letter of April

3d, and the additional evidence forwarded with your letter of April 11th, have been carefully considered.

These papers prove satisfactorily that *the health of Lieutenant De Haven was seriously impaired by the exposure and hardships incident to his cruise in the Arctic in 1850-'51; that after his return therefrom he apparently regained his previous robust health, and for several years performed efficiently the active duties of his profession; that he was retired from active service in 1862 on account of failure of memory, his physical condition being at that time good, and that he died of disease of the lungs in 1865.*

The additional evidence is merely corroborative of that previously offered, and there is nothing to show conclusively that the disease of which he died was contracted in the line of duty; nevertheless, *from the known effects upon the human constitution of extreme cold and other causes inseparable from wintering in Arctic regions, I am of the opinion that such connection as the law intended may be fairly inferred in this case.*

The papers in the case are herewith returned.

Very respectfully,

(Signed)

W. GRIER, Surgeon General.

To the COMMISSIONER OF PENSIONS,
Washington, D. C."

The opinion was given under the following section of the Revised Statutes:

"SEC. 4717. No claim for pension not prosecuted to a successful issue within five years from the date of filing the same shall be admitted without record-evidence from the War (1) or Navy Department of the injury or the disease which resulted in the disability or death of the person on whose account the claim is made: *Provided*, That in any case in which the limitation prescribed by this section bars the further prosecution of the claim, the claimant may present, through the Pension Office, to the Adjutant General of the Army or the Surgeon General of the Navy, evidence that the disease or injury which resulted in the disability or death of the person on whose account the claim is made originated in the service and in the line of duty; and if such evidence is deemed satisfactory by the officer to whom it may be submitted, he shall cause a record of the fact so *proved* to be made, and a copy of the

(1) The operations of section 4717, as it refers to the *Army cases*, are different from what they are in Navy cases. The enormous number of calls by the Pension Office on the War Department occasions delay in the examination of proofs already recorded there. The examination and report upon *evidence referred there* is, according to the report of the Commissioner of Pensions (Report 1877, p. 7,) prevented by a ruling of the Secretary of War. It would be impossible to give the immense number of Army cases the examination which the few Navy cases receive from the Surgeon-General of the Navy. No complaint is made by the Commissioner of Pensions of the working of this law in Navy cases. The search in the Navy Department for all the evidence possible is thorough, and the examination of all the proofs, by the most competent judge, is full and complete.

The Commissioner in his report says: "As now executed in the War Office this section is working very great hardship upon many claimants. In my opinion," he says, "such legislation should be had as will either relieve the claimants from the limitation of the statute or enable them to obtain a consideration of the testimony offered by them in relation to the records in the office of the Adjutant-General."

same to be transmitted to the Commissioner of Pensions, and the bar to the prosecution of the claim shall thereby be removed."

I understand that this committee, on account of the recommendation of the Commissioner, has reported a bill in which this section is repealed. Any rights, however, which have been acquired under this section stand (1) and among them is the right claimed by Mrs. De Haven of having the Surgeon General's Opinion *decide* this question of origin of her husband's death.

Mrs. De Haven's petition is not for an act of grace; it is for the confirmation of a right.

My propositions in her behalf are:

First. That a proper construction of section 4717 of the Revised Statutes manifests her right to the relief desired.

Second. That by the well-settled legal definition of the term "line of duty" as it applies to the origin of her husband's death she is entitled to such relief; and,

Third. That well-established usage in the administration of the pension laws entitles her to such relief.

If these proposition or any one of them are established to the satisfaction of the committee, its favorable report on Mrs. De Haven's petition is asked.

It is submitted that if section 4717 of the Revised Statutes has not the intent to guide and *determine* in navy cases the settlement of the question as to origin of death it has no intent and does nothing. The section upon examination will be found to refer only to such cases as are lacking in medical proofs. Cases where the medical proofs are complete are not in any way affected by this section. The first part of the section says: "No claim for pension not prosecuted to successful issue within five years from the date of filing the same shall be admitted without record-evidence from the Navy Department." Evidence of what? "*Of the injury or disease which resulted in the disability or death of the person on whose account the claim is made.*" The section goes on to say: "Provided that in any case in which *the limitation prescribed by this section*"—that is, the part of the section just read, for there is no limitation afterwards—"bars the further prosecution of the claim," &c. What bars further prosecution? "The limitation prescribed by this section." What is it that limits? The lack for five years of the record-evidence. That is what limits. There is nothing else that limits. That is the bar. On examination it is logically and clearly so. It is purely a medical matter. Now how is this bar, which is so thoroughly a medical bar, to be removed in a navy case? In the language of the section, "the claimant may present through the Pension Office to the Surgeon General of the Navy evidence that the disease or injury which resulted in the disability or death of the person on whose account the claim is made originated in the service and in the line of duty; and if such evidence is deemed satisfactory by the officer to whom it may be submitted he shall cause a record of the fact so *proved* to be made, and a copy of the same to be transmitted

to the Commissioner of Pensions, and the bar to the prosecution of the claim shall be thereby removed." What is the *bar* which is "thereby removed," and the removal of which permits the further prosecution of the claim? Unquestionably the bar is the lack of *what the Surgeon-General considers* proper and sufficient medical evidence. The want of that evidence constitutes the bar, and it is only *such* evidence that removes the bar.

When the Surgeon-General has given a favorable opinion on this evidence the fact of origin in line of duty is, as the statute says, "*proved*," The Surgeon-General, not the Commissioner of Pensions, is, by the statute, made the judge of this evidence. His favorable report removes the bar and establishes line of duty, and it cannot do the one without it does the other. It must imperatively and beyond any question legally supply the requisite medical proofs and *establish* the point of origin in line of duty beyond the possibility of its lawful overthrow except by revision of the Surgeon-General.

The Surgeon-General is called upon by law to furnish an opinion upon a matter peculiarly within his province. It is not a law point except in so far as the statute makes a medical question one of law. He not only of all officers of the Government, but of all men, is the individual best qualified by professional study, long acquaintance and thorough familiarity to give decisive opinions on questions relating to disabilities and diseases incurred in the Navy. By express statute it is made his duty to furnish opinions in a particular class of cases, and in that class only, to another executive officer of the Government, not higher in rank, but one who has under his "control and direction," (1) placed there by statute, "a duly qualified surgeon," known as Medical Referee. To this Referee all medical questions arising in the Pension Office are referred. Is it to be supposed that the opinions of one of the highest medical officers known to the law, when specially called for by law, are to be reviewed and accepted or rejected at will by this inferior medical officer? Or, is it to be supposed that the Commissioner of Pensions himself, presumably one without medical education or experience, is to review and overthrow an opinion of the Surgeon-General rendered in pursuance of law. Such a supposition is unreasonable and would make section 4717 absurd. It would be an indignity to the Surgeon-General and to the Navy Department. It cannot be considered that Congress contemplated the possibility of such a lack of the respect due from one department to another, as there would be in an overruling of the Surgeon-General's opinion, in this wise, by the Commissioner of Pensions. Why should the form be gone through with, of sending all the medical evidence in a Navy pension case to the Surgeon-General, of having him—as I understood he does personally, for there are not very many of these Navy cases—consider at length and with great care all of the proofs submitted, embodying his conclusions in an opinion to be furnished the Commissioner of Pensions, if, after all, the Commissioner, or as a matter of fact the Medical Referee, can overrule his opinion? If the law has any meaning in Navy cases, it is that the Commissioner shall accept this opinion of the Surgeon-General. Suppose the Surgeon-General, in one of these cases, reports that the evidence submitted to him is *not* satisfactory, Can the Commissioner do away with such a record? Has he any option

(1) Sec. 4776, R. S.

in the matter? As the law stands the Commissioner *must* reject the case. Neither he, or his Medical Referee, could alter or obviate the effect of such a report. But does he not have as much right to overrule and set aside an unfavorable opinion given under the provisions of this statute, as he does to overrule and set aside a favorable one? If the Surgeon-General returns a favorable opinion, does it have *any* effect whatever unless the Commissioner accepts it as conclusive? None in the least. If it had been intended that the Commissioner of Pensions should not be governed by the opinion of the Surgeon-General in this matter *why* should his opinion have been required by statute? If the Commissioner was still to decide the medical question in the case, why did not legislation rest at the point of having a record made of the facts, and a copy of *such* a record forwarded? Why should the *conclusions* of the Surgeon-General be required if they were not to be heeded? Why should he be called upon to devote time to the examination of evidence and the forming of an opinion, if a simple deed of recording and a transcript of the record,—mere clerical work,—was all that was necessary? And what else would have been *necessary* upon the idea that it was the *Commissioner's* duty to examine and determine the medical question? The Commissioner had a special medical adviser in his own office,—why require the conclusions of a superior officer an *authority* on the subject? There must have been a reason for this legislative requirement,—it is presumably a good one,—and unless this authoritative opinion was to guide and govern, there was no good reason. What would be thought if the Commissioner should overrule an opinion of the Attorney-General in a question of law that had been referred to him,—should say, “I do not coincide with his views of the law and therefore shall not act upon them?” Would such conduct be any less proper or legal than for him to overrule the opinion of the Surgeon-General in a matter that had by special enactment been referred to the Surgeon-General for his opinion? (1)

The Court of Claims has decided (2) that the pension laws being “beneficial in their nature, are therefore to be construed beneficially.” It does not seem possible that upon an examination there can be any *doubt* that that section 4717 was intended to make the conclusions of the Surgeon-General determine the medical questions involved; but if there is doubt, ought it not, in the case of one whose entire life was spent in the service, to be solved *beneficially*? It could not have been contemplated by Congress that a medical opinion from the Surgeon-General favorable to a claimant should not be acted upon by the Commissioner of Pensions favorably. It certainly is not in this case a beneficial construction of law, for it to be made to uphold the unfavorable medical opinion of one unlearned in the science of medicine against the favorable opinion of a recognized authority in that science, or for it to permit the opinion of an inferior medical officer to outweigh and overrule that of one of the two highest medical officers known to the law. I think it must be held that the Commissioner has no right to construe a law unfavorably to a claimant for pension that is reasonably susceptible of a favorable

(1) Later I shall show that, in Mrs. De Haven's case, the Commissioner does virtually overrule an opinion of one of the most learned and distinguished Attorney-General this country has known.

(2) *Accardi vs. United States*, Dev., 134.

construction. And I submit that in construing Section 4717, in its application to Mrs. De Haven's case, the Commissioner construes the law unfavorably when it is reasonably susceptible of a favorable construction, and says a fact is not proved which the section says is proved.

All navy pension claims were formerly settled in the Navy Department, and certain ones are now, by statute, (1) determined there. The Commissioner of Pensions has no jurisdiction in the *allowance* of these claims; he has only to see that they are paid. If the Commissioner, in one of these cases, should disapprove of the medical conclusions upon which the claim is granted, would he possess the authority to deny the pension? Certainly not. It is obligatory upon him to see that the pension is paid; and I hold it to be, under the provisions of section 4717, equally obligatory upon him to respect the decision of the Surgeon General in Mrs. De Haven's case; and it is only in Mrs. De Haven's case, the Surgeon General informs me that the Commissioner, so far as he is aware, has not accepted his opinions, rendered according to the provisions of this section, as conclusive.

I have endeavored to show, that by a proper construction of section 4717, the Commissioner of Pensions was bound to accept the opinion of the Surgeon General as legally establishing the origin in line of duty of the death of Lieutenant De Haven. I now wish to call your attention to the evidence upon which the Surgeon General based his opinion, which is all the evidence regarding Lieut. De Haven's death, and the disease which caused it, that there is or that there was before the Commissioner of Pensions. It is desired that the Committee be particularly informed of the nature and extent of this evidence, as, later, I shall exhibit the medical proofs that the Pension Office has considered sufficient to allow pension upon, in other similar, though less meritorious cases. I think I shall make it plain that the practice and custom of the Pension Office has been to consider *sufficient* even less and much weaker evidence than has been furnished in Mrs. De Haven's case.

The original papers from the Pension Office are before the committee, and state as follows:

From the affidavit of Dr. Jeans (2): That Lieutenant De Haven died May 1, 1865, of disease of the lungs "incurred in the service in line of duty;" that he was originally a man of strong and robust constitution, and free from any tendency to disease of the lungs; that his Arctic service may have tended to undermine his health.

From affidavit of S. P. Griffin (3), second in command of De Haven's Arctic Expedition: That De Haven was for a length of time off duty, sick, owing to the extreme exposure, cold, and hardships incident to his service.

From Dr. Kane's letter to the Navy Department relative to the medical

(1) Secs. 4756 & 4757, R. S.

(2) Certified by Wm. B. Mann, prothonotary of the Court of Common Pleas, Philadelphia, to be a physician of eminence and strict integrity.

(3) Late Lieut., U. S. N.

The intent of the proviso in Section 4717 was to remedy an evil otherwise certain to arise from the effect of the first clause of the section. This proviso is plainly in the interest of the claimant for pension. It is construed by the Commissioner to the claimant's prejudice. It intended to have one judge, a qualified one, decide a certain point. By the Commissioner's construction two judges consider the point, and the adverse conclusions of *either* determine *against* the claimant, while it requires the favorable conclusions of *both* to determine *for* the claimant. Plainly this is not a proper construction of a remedial statute. "Statutes should, if possible, be so construed as to accomplish the end which the legislature had in view and not so as to defeat it; and remedial statutes must be liberally construed to advance the remedy for the mischief for the cure of which they were enacted." (2 U. S. Digest, p. 658.)

features of De Haven's cruise (1): That there was much sickness in the cruise owing to exposure, confinement in crowded quarters, and inadequate medical supplies. "The cases at one time included with three exceptions every man and officer in the expedition." That the expedition returned to the United States in good health.

From the Report of the Board of Survey of January 30, 1862, which retired Lieutenant De Haven: That he was disabled from loss of memory, and that his health was otherwise good.

It will be seen by the following how superficial the examination of this Board of Survey was, how little likely it would be to detect and report upon a disease of the lungs, and it will also be seen to what *cause* the disability for which he was retired was attributed.

From letter to Mrs. De Haven from Capt. F. Engle, U. S. N., one of the Board of Survey upon whose report Lieutenant De Haven was retired. (2) "The defect of your husband was mentioned to the medical officers by himself. The Board did not ask him a single question. The defect in my mind was caused by arduous service when in command of his Arctic Expedition."

The foregoing is the medical evidence that there was in the case at the time of the unfavorable report of the Medical Referee of the Pension Office. There is nothing to show that the following proofs were ever considered by the Medical Referee. All of the proofs were considered by the Surgeon-General.

In particular do I wish to call your attention to the following extracts from Dr. Kane's Journal, showing the effects of Arctic service upon the human system:

"December 28, 1850. (3.) Evidences not to be mistaken convince me that the health of our crew, never resting upon a very sound basis, must sink under the continued influences of darkness and cold. The temperature and foulness of air in the between-deck Tartarus cannot be amended; otherwise it would be my duty to urge a change. Between the smoke of lamps, the dry heat of stoves, and the fumes of the galley, all of them unremitting, what wonder that we grow feeble! The short race of Christmas day knocked up all of our officers except Griffin. It pained me to see my friend Lovell, our strongest man, fainting with the exertion. The symptoms of scurvy among the crew are still increasing and becoming more general. Faces are growing pale, strong men pant for breath upon

(1) Letter dated October 20, 1851. Extract furnished Pension Office by Navy Department October 20, 1876, is as follows: "On the 10th of June, 1851, we emerged from the ice after a drift of 1,060 miles and an imprisonment of nine months, for eighty-one days of which the sun was below the horizon. Throughout this protracted confinement we were unremittingly exposed to the same causes of disease. The occasional resources for the sick obtainable in harbor by all previous Arctic explorers were entirely wanting to us. This fact, in conjunction with our necessarily crowded quarters and unavoidable exposure to cold and moisture, sufficiently explains the diffused scorbutic tendencies. I need not add that this season was one of trial and responsibility to the medical officers. The cases at one time included with three exceptions every man and officer in the expedition. The expedition returns to the United States in good health and without the loss of any of its members."

(2) On file, dated Feb'y. 20, 1862.

(3) United States Grinnell Expedition, p. 271.

ascending a ladder, and an indolence akin to apathy seems to be creeping over us.

December 30. (1.) Looking round upon my messmates with that sort of scrutiny that belongs to my craft and my position, I am startled at the traces, moral and physical, of our Arctic winter life.

January 22, 1861. (2.) The anomalous host of evils which hang about this vegetation in darkness are showing themselves in all their forms. My scurvy patients, those I mean on the sick list, with all the care that it is possible to give them, are perhaps no worse, but *putus in the joints, rheumatism, emphyse, loss of appetite, and general debility, extend over the whole company.*

February 23. (3.) The officers, too, the captain (De Haven,) Mr. Lovell, and Mr. Murlough complain of stiff and painful joints and limbs, with diarrhoea and impaired appetites—the Doctor like the rest.

February 23. (4.) A cold here means a sudden *malaise*, with insupportable aches in back and joints, hot eyes and fevered skin. We all have them, coming and going, short-lived and long-lived. They leave their mark too. This Arctic work brings extra years upon a man.

February 28. (5.) All the officers were disabled; old pains were renewed, old wounds opened. Even old bruises and sprains resolved at barely remembered periods back came to us like dreams. Our commander, certainly the finest constitution among us, was assailed like the rest. In a few days purpuric extravasations appeared on his legs, and a dysentery enfeebled him to an extent far from safe."

From affidavit of W. H. Murlough, one of the officers of the Arctic Expedition. (6)

"That he knows that said De Haven appeared to be in perfect health and in an extremely robust constitution when the expedition started; that said De Haven was exposed to extraordinary hardships and exposure during the time the expedition was cruising, having to keep watch during half the night during bad weather, and *if not being allowed for him to pass an hour at a time on the topsail yard turning the wheel through the ice to blinding gales of wind and snow; that during the winter spent in the Arctic regions the said De Haven declined, and that he got into a weak and low state.*"

Another affidavit from one of the officers of the expedition is to same effect. (7)

(1) United States Grinnell Expedition, p. 271.

(2) United States Grinnell Expedition, p. 272.

(3) United States Grinnell Expedition, p. 268.

(4) United States Grinnell Expedition, p. 305.

(5) United States Grinnell Expedition, p. 311.

(6) Late Lieut. U. S. N. Affidavit dated March 20, 1877.

(7) Extract from affidavit of Robt. R. Carter, late lieutenant U. S. N., one of the officers of De Haven's Expedition, dated March 20, 1877: "That said De Haven suffered particularly from the effects of the exposure incident to his duties as Commander of the expedition, and that he had been exposed to such an extent that he had been severely and permanently injured, so as to finally result in the disease of the lungs, of which deponent believes he died: that the hardships which at that time were connected with the Arctic service were such as to affect the strongest constitution, and though said De Haven was possessed of a powerful physique, his arduous duties, to which he attended with the utmost fidelity and earnestness, and the necessary exposure attendant thereupon, prob-

From affidavit of Capt. Gillis, U. S. N.: That De Haven's health at the time of his coast survey service in 1855-'56, "was undermined from the effects of his Arctic service," and that it gradually declined until he died; "that his death was hastened by necessary exposure in the service and in the line of duty."

From affidavit of an intimate personal acquaintance of De Haven for fifteen years: That before he went on the Arctic Expedition, De Haven was in robust health and remarkably powerful physique. That from that time and owing to the exposure incident to his service in the Arctic regions his health declined until he died. (1)

The affidavit of Mrs. De Haven (2) is substantially to the same effect as the preceding, but it more particularly portrays the progress of the disease.

This is all of the evidence on the medical point in the case.

ably resulted in more permanent ill effects than to any of his brother officers. All were severely tried with the continuous hard work, but, probably because he was an older man, and in addition to the laborious struggle (in which he took the lead,) he had the anxious responsibility of directing the expedition, the effects were deeper and more firmly seated in his case than in those of the others."

(1) "Geo. T. Da Costa, residing at No. 2366 De Lancey Place, Philadelphia, deposes and says that for fifteen years and more before his death he was acquainted with Lieutenant E. J. De Haven, late of the U. S. Navy, was with him very frequently when he was in Philadelphia, and upon terms of close companionship and friendship. That before he went on the Arctic Expedition said De Haven was in robust health and of remarkably powerful physique and strong constitution. That from that time, and owing to the exposure incident to his service in the Arctic regions, his health declined until he died May 1, 1865, of disease of the lungs. That this disease of the lungs was the direct result of the breaking down of his system consequent upon his Arctic service. That this affiant was with said De Haven almost constantly during his last illness, and makes this affidavit from personal knowledge of and intimacy with said De Haven. That this affiant has no pecuniary interest in the claim of Mary N. De Haven for pension."

Wm. Maclain, Deputy Prothonotary certifies that Mr. Da Costa is one of the most respectable citizens of Philadelphia and in every way worthy of credit.

(2) Mrs. De Haven's affidavit dated March 7, 1877, states: "That up to the time of the departure of said Edwin J. De Haven on the Arctic Expedition of 1850-'51, which he commanded, he was of sound health and exceedingly strong constitution, and free from tendency to any disease; that he returned from that expedition with his health seriously impaired from the effects of cold, cough, and severe exposure, and from that time his health declined until he died; that his broken constitution was still further impaired by his subsequent service, particularly that in the Coast Survey in the Gulf of Mexico while in command of the U. S. S. "Arago;" that after he left the Coast Survey service the condition of his health resulted in the spitting of blood, which continued at intervals for several years, resulting finally in a profuse hemorrhage the day before his death; that during this period and until shortly before his death he was very averse to any allusion to this disease, and particularly requested me not to mention the subject to any one; that the only persons beside myself that were aware so far as I know of the progress of the disease were my father and mother, near whom we lived, who are both dead, and Dr. Green of the Navy, also dead, who he went to see once in a more than unusually severe attack of blood-spitting, from which interview he returned much cast down and with a strong foreboding of death; that said E. J. De Haven attributed, as was certainly the case, his original breaking down of constitution and its resultant disease to his Arctic service, which ultimately resulted in his death."

Mrs. De Haven is certified by Wm. Maclain, Deputy Prothonotary of the Court of Common Pleas of Philadelphia, to be a lady of the highest respectability and credit.

Now, as to the action of the Pension Office upon this evidence and upon the opinion of the Surgeon-General based upon this evidence: There now where appears in the papers, anything to show that any review or examination was made of this evidence, or that any opinion based upon the whole of this evidence was given by the Medical Referee of the Pension Office subsequent to his report, dated October 23, 1876. *The greater portion of the proofs were filed after that date.* The case given to the examination of the evidence that was before the Medical Referee may be judged by the following from the opening sentence of his report: "De Haven entered the Navy in 1829, and among other duties *accompanied* the Kane Arctic Expedition of 1850-51. He was retired in '64 and died of consumption in '65." "Accompanied" hardly conveys a correct idea of De Haven's connection with the Expedition he *commanded*; and "64" conveys an altogether incorrect idea of the year in which he was retired, which was '62.

This report of the Medical Referee, hastily made as is evident, and based upon only a fraction of the testimony before the Surgeon-General, is the only report from the chief medical officer of the Pension Office in the case. There are two or three very informal expressions of views from other clerks in that office—one from a gentleman-styled medical reviewer—made subsequent to the report of the Surgeon-General, and it appears, after all, that it is the conclusions of these gentlemen and not that of the only medical officer known to the law in the Pension Office, that have overturned and set at naught the opinion of the Surgeon-General.

The statements that seemed to have weighed at the Pension Office against the case are, that in Kane's medical report, that the Arctic Expedition returned to the United States in good health, and that of the Rating Board in 1862, that aside from the loss of memory De Haven's health at that time was good. The latter is completely offset, so far as regards a disease as subtle as one of the lungs, by the statement of Capt. Eagle, that the Board did not ask De Haven a single question, that the failure of memory was mentioned to the Board by De Haven, plainly showing that it was not that defect alone that their attention was drawn. There was no occasion for the Board to particularly investigate De Haven's general health as their object was simply to find if he was sufficiently disabled, from any cause, to be retired. Having found one cause sufficient to retire him upon, all that was necessary for the Board to ascertain had been ascertained, and the general health of one of his apparently strong physique might naturally be regarded as good. It is odd, with the knowledge of his antecedent exposure, probable that he was perfectly sound in lungs at the date of his retirement in '62, and that he subsequently incurred disease of lungs so as to prove fatal in 1863, and the proofs are otherwise. As to Dr. Kane's general statement that the expedition returned to the United States in good health, it is not doubted that such was apparently the case. But the effects of the sufferings which Kane's Journal describes were sufficiently deep seated so, as Kane says, "leave their mark." De Haven's "snow blindness," while in the Coast Survey service, and the "loss of memory," for which he was retired, were both, as stated, caused by service in the Arctic Expedition, and the statements of many reliable witnesses that his health was generally broken then, and that his disease and death resulted therefrom, are perfectly reasonable and uncontradicted.

I now wish to call your attention to the summing up of the most elaborate and undoubtedly best considered opinion in regard to the connection between disease and line of duty that has ever been given in this country—that of Attorney General Cushing—an opinion which has never been modified or changed by any succeeding Attorney General, which was intended for and in the main has been a governing opinion for the Pension Office. Its language has been adopted by the Court of Claims, and it stands to-day or should stand as having the force of law.* In summing up his opinion to the Secretary of the Interior Mr. Cushing says: (1) "If called upon to suggest any rule for the guidance of his" [the Commissioner of Pensions] "discretion in the matter, it would be obvious for you to say that the pension laws are beneficial in their nature, and therefore to be construed beneficially in matters of inevitable doubt; that when the proofs are balanced, and it is impossible to determine by them as to the fact of disease contracted and the fact of line of duty, found in juxtaposition, whether this collocation be of contiguity only, or of actor and subject, of contemporaneity or sequence only, or of cause and consequence, it would be reasonable to presume in favor of the pension, and also to presume in favor of the pension in cases where the line of duty appears to enter potentially into the causes of death, although it should happen not to be certainly provable that it was the exclusive or predominant cause; so that a possible error of absolute and mere uncertainty shall not be suffered to defeat the liberal intentions and beneficial policy of the Government."

Having exhibited the evidence upon which the Surgeon General based his favorable opinion, and also shown that such opinion was strictly in accordance with the rule laid down by Attorney General Cushing, I now desire to show the medical proofs which the Pension Office has considered sufficient without any favorable opinion from the Surgeon General in two cases of *the same disease*, occurring in the Navy, of which Lieutenant De Haven died.

First, that of Elizabeth Hackett, who was pensioned October 20, 1870, on account of her husband James, sergeant of Marines, who died October 1, 1864, of disease of the lungs, after a service of seventeen years. The Marine Barracks' record, and the official certificate of death, are the only proofs relating to the disease of which Hackett died: the first shows he was under treatment for the disease at different times, and that he apparently recovered. There is no evidence in it that the disease originated in the line of duty. The certificate of death simply states, in regard to his disease, that it was "consumption," and that "*there is no evidence that it originated in the line of duty.*" This case was admitted by Mr. Clark, the present chief clerk of the Pension Office.

Second, the case of Catharine McGregor, who was pensioned October 2, 1871, on account of her husband Archibald, a fireman in the navy, who died January 11, 1864, of disease of the lungs. The evidence in this case is two official certificates of death—one of which states that "there is no evidence that the disease originated in the line of duty," and the other that "the disease did not originate in the line of duty;" and

(1) 7th Opin. Attys. Gen., 156. The Opinion is sixteen pages in length.

there is no other evidence in the case relating to McGregor's disease or death. He served only a little over two years. *This case was reported by Dr. Hood, the general medical officer of the Pension Office, and was subsequently passed by Dr. Hood without any additional evidence relative to the disease.* All the papers in the cases of Hackett and McGregor are before the Committee.

I can instance twelve other similar cases which have been admitted, but the only additional ones which I will refer to here are two cases alluded to in Mrs. De Haven's petition, those of Alice Summerfield, widow of William, gunner, U. S. N., and of Elizabeth B. Ball, widow of W. H., lieutenant commander. The only proof in regard to Summerfield's disease—an affection of the liver—is the official certificate of death, which states: "*there is no evidence that it originated in the line of duty.*" One official certificate of the death in the case of Lieutenant Commander Ball states that *there is no evidence that his disease*—of the heart—*originated in the line of duty*, and another official report states that it *did not originate in the line of duty*. Both Summerfield and Ball had been in the service many years.

The ground taken in the allowance of all these cases was that covered by the rule laid down by Attorney General Cushing, viz: that line of duty was to be presumed in cases of disease after a length of service. (1.) In these admitted cases to which I have called your attention there is really no proof that the disease originated in the line of duty, except the proof presumptive from length of service.

Establishing the fact of origin in the line of duty of Lieutenant De Haven's disease is the proof presumptive from length of service, the total absence of proof to the contrary, and the direct testimony of his brother officers, of official records, of Mr. De Creta and Mrs. De Haven. I submit that by the *general practice and custom* of the Pension Office Mrs. De Haven is entitled to have the point of origin of her husband's death established in her favor.

This committee has had before it the case of Harriet E. Edwards, widow of Dr. Edwards, of the Navy, who was placed on the retired list in 1861, and who died in 1874, of apoplexy, and the committee stretched the very spirit of Mr. Cushing's opinion in "claiming for the widow the benefit of any doubt as to the cause of death" as a reason for its favorable report in her case. (2.)

(1.) As a matter of fact Mr. Cushing's Opinion goes farther than this, in that it holds that where there is proof from the last report of equal weight the presumption must be in favor of the claimant.

(2) 45TH CONGRESS, }	HOUSE OF REPRESENTATIVES.	{ REPORT
2d Session. }		{ No. 302.
HARRIET E. EDWARDS.		

MARCH 1, 1878.—Considered at the Committee of the Whole House, and ordered to be printed.

Mr. MACKAY, from the Committee on Invalid Pensions, submitted the following REPORT:

(Transmitted July 16, 1878.)

The Committee on Invalid Pensions, to whom was referred the petition of Harriet E. Edwards, widow of David S. Edwards, late a surgeon of the United States Navy, having had the same under consideration, respectfully report:

That it is in evidence that Harriet E. Hovey (now Harriet E. Edwards), the peti-

And the Senate Committee on Pensions has likewise manifested the same spirit in its recent report in the case of Caroline M. Egbert, widow of Dr. Egbert, of the Navy, who also died while on the Retired List, in 1875, of pneumonia, the fatal results of which the Committee attributes to a condition of system superinduced by an attack of yellow fever in 1830. (1)

tioner.) was married on the 22d of November, 1830, to David S. Edwards, then a surgeon in the United States Navy. The records of the Navy Department prove that David S. Edwards entered the service of the United States, as an assistant surgeon, July 30, 1818, and served continuously for more than fifty years, during which period he was on duty in almost every gulf and sea on the globe. That on the 21st of December, 1861, he was placed on the retired list; 25th April, 1865, detached and waiting orders; 13th February, 1869, president of examining-board for promotion; 3d March, 1869, detached; 14th April, 1869, senior officer of medical board for examination of officers for promotion; 18th September, 1871, detached; 3d March, 1871, promoted to medical director. Died at Chesnut Hill, near Bridgeport, Conn., on the 18th of March, 1874.

In 1832, Surgeon Edwards was on duty in the cholera hospital at the Brooklyn navy yard. During the Mexican war he was attached to the army as medical director of General Quitman's division, and accompanied General Scott in his march upon Mexico; was present at the battles of Contreras, Churubusco, and the storming of Chapultepec, in all of which he rendered valuable and efficient services. His services were varied and of a responsible character, but always faithfully discharged, and were recognized and appreciated by the Government, as is evidenced by the high position he held in the United States Navy at the time of his death. He died poor, leaving a widow in indigent circumstances.

The application of petitioner for a pension under the general law was rejected by the Commissioner of Pensions, for the reason that Surgeon Edwards died of apoplexy—the result of old age—and not of any disease contracted in the naval service of the United States. The records of the Surgeon-General's Office show that during his long service he was frequently afflicted with sickness in different parts of the world, and among the diseases mentioned, of which he had several attacks, resulting from climatic changes, were those of congestion of liver and brain. Dr. Robert Hubbard, surgeon of the army, swears that—

"I attended David S. Edwards during his last illness and at the time of his death, which occurred on the 18th of March, 1874, and the immediate cause of his death was, in my opinion, apoplexy, predisposed by degeneration of the cerebral arteries. I further declare my belief that frequent and severe attacks of climatic diseases while in the service and in the line of duty were efficient causes in determining the character of his last malady, and in hastening his death."

The Commissioner of Pensions has ruled that the Government is estopped, both under general principles and by a fair interpretation of the statutes, from claiming that a soldier would have had the same sickness, and would have died of it at the same time he did if he had not entered the service.

An officer of the Pension Bureau, in reporting upon this case, says:

"I look upon this case as a good *special-act case*, but not admissible under the general law."

Claiming for the widow of Surgeon Edwards the benefit of any doubt as to the cause of his death, and in view of the long, faithful, and meritorious services of the officer, and also that the fund from which naval pensions are paid is set apart from prize money earned by the officers and seamen of the navy, the committee believe the prayer of the petitioner should be granted, and report back the petition with an accompanying bill, and recommend its passage.

(1) 45TH CONGRESS, }
2d Session. }

SENATE.

f REPORT
(No. 154.)

IN THE SENATE OF THE UNITED STATES.

MARCH 18, 1878.—Ordered to be printed.

Lieutenant De Haven spent his life from early boyhood in the Navy. His services were lengthy, arduous to an extent unusual, and distinguished. His name deservedly ranks with those of the greatest among the explorers of Arctic and Antarctic regions, and his record is blameless. He was, in the language of the chairman of this committee in the case of Mrs. Gallagher, (1) "one of those officers who contributed one-half of their prize-money to form a pension fund; now in the hands of the Government, which has accumulated from the energy and gallantry of our Navy (2) it amounts to many millions of dollars, and is devoted exclusively to paying navy pensioners."

If it has appeared that his widow has been denied the benefits of this fund,

Contrary to the provisions of a particular statute;

By a construction of law in opposition to that of the Department of Justice; or,

Against the practice and custom of the Pension Office;

Or if, by the action of this Committee in a similar case, there may for this widow also be claimed the benefit of any doubt as to the cause of death;

Then is there due occasion for such relief as is now asked.

FRANK W. JONES,
Of Counsel for Petitioner.

Mr. Voorhies, from the Committee on Pensions, submitted the following

REPORT: [To accompany bill S. 547.]

The Committee on Pensions, to whom was referred the bill (S. 547) granting a pension to Caroline M. Egbert, having had the same under consideration, report as follows:

Caroline M. Egbert applies for a pension as the widow of Daniel Egbert, who died October 24, 1875, on the retired-list as a medical director of the United States navy.

The deceased was appointed an assistant surgeon United States navy in 1829, and was commissioned June 3, 1839, to take rank from August 22, 1829.

It appears from the proper records that in August, 1839, Dr. Egbert, while on duty at Pensacola, was attacked by yellow fever, and was treated for the same in the hospital at that place.

It is claimed that from the effects of this attack he never recovered, but that his constitution was so impaired by it as to leave him less able to contend with future attacks of other diseases. It is true that he performed a long career of active service, and has left a long and honorable record of public duty, but it is alleged that he always suffered from enfeebled health, and that when he was seized with pneumonia, his last and fatal illness, the broken condition of his constitution, arising from the attack of yellow fever, though many years before, contributed directly and immediately to his death. This view of the case is fully sustained by the testimony of Dr. George R. Morehouse, of Philadelphia, who attended the deceased in his last sickness. Dr. Morehouse says:

"The early and fatal issue of a limited pneumonia in Dr. Egbert's case was due to his previous feeble health, induced by an attack of yellow fever in the West Indies, and confirmed by subsequent long continued exposure to the influences of a tropical climate. I have been Dr. Egbert's medical adviser from time to time since 1852, and know that he labored under impaired health during my knowledge of him, and I do not doubt this condition determined a fatal issue in a disease which in a good constitution would have proved tractable to treatment."

Dr. L. B. Hunter, medical director in the United States Navy, also testifies to a long intimacy with Dr. Egbert, and fully sustains the position taken by Dr. Morehouse.

It is recommended that the bill do pass. [Passed the Senate; pension commencing from date of death.]

(1) H. R. Report 355, 2d Sess. 45th Congress.

